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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Public Copy

File:

Office: Nebraska Service Center

Date:

07 SEP 2001

IN RE: Petitioner:

Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(B)

IN BEHALF OF PETITIONER: Self-represented

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:


This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a higher education institution (university). It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a research scientist. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

On appeal, the petitioner argues that the beneficiary is recognized internationally and submits evidence that her work was presented at an international conference in Denmark.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

This petition was filed on September 30, 1999 to classify the beneficiary as an outstanding researcher in the field of biochemistry and molecular biology. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience in the field of biochemistry as of September 30, 1999, and that the beneficiary's work has been recognized internationally within the field of biochemistry as outstanding.

Service regulations at 8 C.F.R. 204.5(i)(3)(i) state that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists six criteria, of which the petitioner must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. The petitioner submitted evidence which appears to address the following criteria.¹

Evidence of the alien's original scientific or scholarly research contributions to the academic field

The record contains a letter from the petitioner, job reference letters from prior employers and articles written by the beneficiary. In his letter, Gregory Bohach of the University of Idaho, the petitioner, asserts that the beneficiary "has made valuable contributions" while employed at that institution. Dr. Bohach does not, however, enumerate any of those alleged contributions. In a 1993 letter addressed to Dr. Daniel J. Guerra at the University of Idaho, Dr. Lidia Paśś-Dziegielewska writes:

I first met [the beneficiary] as an [sic] consultant in the project on purification of recombinant human insulin, held in our Institute and I have found her to be a highly experienced and intelligent scientist. Currently [the beneficiary] is the full-time research scientist in our Institute and leads the research on cyclosporin A biosynthesis by *Beauveria nivea* and on secondary metabolism in flax (*Linum usitatissimum*) and its modification by anti-sense RNA technology. She has the capability to design and execute very complex research endeavors and her expertise is superior to most people working in this area.

While Dr. Paśś-Dziegielewska discusses the petitioner's project and praises her skill, she fails to explain how the petitioner has contributed to her field. In a letter dated April 1, 1992, Gordon Wells, President of Tradex International, confirms that the petitioner worked for Biotechnica Canada from 1987 to 1989, stating:

During which time [the beneficiary] carried out her employment responsibilities in a professional and conscientious manner. She was very highly regarded by her fellow workers and management. [The beneficiary] was particularly helpful in assisting me to evaluate the on-going basic research carried out by Biotechnica Canada.

¹ At no point has the petitioner argued which criteria the beneficiary allegedly meets.

Mr. Wells does not assert that the petitioner made any contributions to her field during her time at Biotechnica Canada or that she is known internationally. In a letter dated June 28, 1991, Dr. Herbert Winkler of the University of South Alabama writes:

[The beneficiary] has exceeded all my expectations, and I, and all my employees, will be very sorry to see her leave. She is not only very bright and a much harder worker than most students and fellows half her age, but also is very creative, well organized and insightful. She has been able to design and execute just the right experiments to make her studies of lipid metabolism in *Rickettsia prowazekii* progress in a rapid and . . . well focused manner. In addition, she is unusual in today's somewhat pampered and kit-oriented scientific community in that when there is a reagent that is not commercially available or a new method that no one in the lab has done, she is undaunted and in a week has a synthetic method or protocol working.

While Dr. Winkler is clearly impressed with the beneficiary as an employee, he provides little insight into what, if any, contributions she may have made to her field. Like the letters above, he also does not indicate that the beneficiary is known internationally beyond her colleagues and collaborators.

The final letter, from Stanislaw Lewak recommending her for a "fellowship abroad," is undated. Professor Lewak lists the beneficiary's academic history and states:

The research carried out by [the beneficiary] in [the] area of biochemical plant physiology concerned the control mechanisms of seed dormancy and germination. She was involved in research on auxin metabolism, analysis and biological activity of plant phenolics, analysis of cyanogenic glucosides, cyanide generation and metabolism in seeds as well as interactions of cyanide with other germination-controlling factors.

While Professor Lewak specifies the nature of the beneficiary's project at the time, he fails to indicate whether or not she contributed to her field or the nature of those contributions, if any. He also does not indicate that the beneficiary is known internationally.

The director concluded that while the letters praised the beneficiary, they did not indicate the beneficiary was internationally recognized. On appeal, the petitioner submits another letter from Dr. Bohach, who states:

[The beneficiary's] accomplishments are recognized and very well-respected globally. For example, just last week, we attended the 9th International Symposium on Staphylococci and Staphylococcal Infections in Kolding, Denmark. Our group had submitted an abstract describing [the beneficiary's] research findings as to how this bacterium enters cells. She was the first author on the paper. This was a landmark study in which [the beneficiary] discovered a new class of mammalian

cell receptors for *Staphylococcus*. There was a great deal of excitement about this abstract which was one of only a few that were chosen for oral presentation. Choosing a few select abstracts for oral presentation is a common practice at international meetings in our field, and is an honor bestowed only on researchers presenting the most significant research findings at the conference. I should mention that of the 300 attendees, only 24 were from the United States. The remaining 276 scientists represented 25 other countries from Europe, Asia, Africa, and Australia. The ISSSI meeting in Denmark is not the only time [the beneficiary's] work has received this type of international praise at a convention. In 1999, she attended the premiere basic science research meeting in our particular field, the Staphylococcal Diseases Gordon Conference. The meeting was held in Il Cioco Italy during June of 1999. This is an international meeting that occurs biannually at various locations in North America or Europe. [The beneficiary] was one of only six scientists selected from the attendees who were asked to make an oral presentation of their abstracts. In that presentation, she described her discoveries concerning the cellular receptor responsible for *Staphylococcus* invasion of epithelial cells.

...

[The beneficiary] has brought a significant amount of international recognition to the University of Idaho. Her work is recognized by our peers as cutting edge and at the forefront of our field. This was evidence from a seminar presented by Dr. Barbara Menzies from Veterans Affairs Medical Center, Nashville, TN who frequently referred to [the beneficiary's] contributions during a symposium lecture at this year's Annual Meeting of American Society of Microbiology in Los Angeles (symposium on the Intracellular Life of Extracellular Microbes). This type of recognition has helped our university, particularly the Department of Microbiology, Molecular Biology, and Biochemistry, attract students and visiting scientists from all over the world. For example, through her excellent work, [the beneficiary] has helped me recruit and currently train two Ph.D. graduate students from the College of Agriculture at Seoul National University in Korea. They were interested in joining our group because of the potential implications of [the beneficiary's] publications in understanding bovine mastitis and other infectious diseases of the animal agriculture industry. In addition, we will be having a visiting scientist from Italy join us this Fall. He is coming to our lab to learn the cell invasion techniques developed by [the beneficiary].

The record contains the program for the Denmark symposium. That the petitioner presented her research at an international symposium is not necessarily evidence that all of the presenters are well known internationally. Further, this symposium took place after the petitioner filed the instant petition, and is not evidence of the petitioner's international notoriety at the time of filing. Dr. Bohach's remaining assertions are not supported by the record. The letters in the record are all are

from employers and collaborators; there are no letters from independent researchers attesting to the petitioner's contributions to her field. The program for the 100th General Meeting of the American Society for Microbiology lists a presentation by Dr. Menzies, but there is no indication in the program that her presentation favorably referenced the petitioner's research.

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field

The record contains evidence of several published articles authored by the petitioner. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of international notoriety; we must consider the research community's reaction to those articles.

The director concluded that the journal articles did not reflect international recognition. On appeal, Dr. Bohach states:

I would like to note that all of [the beneficiary's] research papers are peer-reviewed studies that are published in journals that have an international readership. Specifically, her staphylococcal papers have been published in *Infection and Immunity* and *The Archives of Biochemistry and Biophysics*. Both of these journals have editors and editorial boards representing multiple countries. She routinely receives reprint requests from other countries. For example, during the past year, we have received requests from, and have mailed reprints of her papers to, scientists in Korea, Poland, France, Italy, Canada, and Brazil. I believe this is clear evidence that her research publications are viewed as significant by a multi-national group of scientists.

Once again, Dr. Bohach's assertions are not supported. Regardless, requests for reprints, while demonstrating an interest in the beneficiary's work, are not necessarily from individuals who have read the beneficiary's articles. Therefore, requests for reprints cannot demonstrate that the beneficiary's articles have been influential. The record contains no evidence that the beneficiary's work has been extensively cited by independent researchers around the world. In fact, the record contains no evidence of any citations to the beneficiary's work..

The petitioner has shown that the beneficiary is a talented and prolific researcher, who has won the respect of her collaborators, employers, and mentors, while securing some degree of international exposure for her work. The record, however, stops short of elevating the beneficiary to an international reputation as an outstanding researcher. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.